

INTERPRETIVE RELEASE
PERSONS PRESUMED TO BE BROKER-DEALERS

The Division of Securities of the Kentucky Office of Financial Institutions has reviewed the applicability of broker-dealer registration requirements to a person who offers and sells securities without using a registered broker-dealer. The Division is of the opinion that a person who, on a recurring basis, offers and sells securities without using a registered broker-dealer may be "engaged in the business" of effecting transactions in securities. This release will clarify the circumstances when the Division will presume such a person to be a broker-dealer as that term is defined in the Securities Act of Kentucky (the Act) and, therefore, subject to registration in Kentucky as a broker-dealer.

The Division will presume a person to be a broker-dealer "engaged in the business" of effecting transactions in securities if, during any twelve month period, the person offers or sells the securities of more than one issuer without using a registered broker-dealer. This presumption is rebuttable based upon an affirmative showing by the person that the person is not "engaged in the business" of effecting transactions in securities. The Division would consider the following factors significant in rebutting the presumption:

- 1) The person primarily performs, or is intended to primarily perform at the end of the offering, substantial duties for or on behalf of the issuer other than transactions in securities and the person restricts his representation activity to:
 - a) preparing or delivering written communication to a potential purchaser and the content of the communication is approved by a partner, officer, or director of the issuer;
 - b) responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser, provided, however, that the content of the person's responses are limited to information contained in a registration statement filed under the Act or the Securities Act of 1933 or other offering document; or
 - c) performing ministerial and clerical work related to a transaction.
- 2) The person is under the issuer's supervision and is a bona fide employee of the issuer.
- 3) The person intends to remain with the issuer after completion of the offering.
- 4) The person has not participated in other offerings of the issuer's securities in the past and will not be participating in future offerings.
- 5) The person receives a fixed compensation and the compensation is not in any way linked to the amount of securities sold.

6) The person participates in offering and selling the issuer's securities only on a part-time basis.

A person who does not successfully rebut the presumption will be subject to registration under the Act as a broker-dealer unless the person is otherwise excluded from the definition of broker-dealer or qualifies for an exemption from registration. However, an individual who is presumed to be a broker-dealer under this interpretation may not rely on the exclusion for "agent" in the definition of broker-dealer unless the individual is effecting the transactions through a broker-dealer with whom the individual is employed.

The Division will take no action to require registration of a person deemed to be a broker-dealer under this interpretation until June 1, 2006.

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Division of Securities